

reasons for not considering such alternative.

(c) State the reasons for the structure of the roll-up transaction and for undertaking such transaction at this time.

(d) State whether the general partner initiated the roll-up transaction and, if not, whether the general partner participated in the structuring of the transaction.

(e) State whether the general partner recommends the roll-up transaction and briefly describe the reasons for such recommendation.

**§ 229.909 (Item 909) Conflicts of interest.**

(a) Briefly describe the general partner's fiduciary duties to each partnership subject to the roll-up transaction and each actual or potential material conflict of interest between the general partner and the investors relating to the roll-up transaction.

(b)(1) State whether or not the general partner has retained an unaffiliated representative to act on behalf of investors for purposes of negotiating the terms of the roll-up transaction. If no such representative has been retained, describe the reasons therefor and the risks arising from the absence of separate representation.

(2) If an unaffiliated representative has been retained to represent investors:

(i) Identify such unaffiliated representative;

(ii) Briefly describe the representative's qualifications, including a brief description of any other transaction similar to the roll-up transaction in which the representative has served in a similar capacity within the past five years;

(iii) Describe the method of selection of such representative, including a statement as to whether or not any investors were consulted in the selection of the representative and, if so, the names of such investors;

(iv) Describe the scope and terms of the engagement of the representative, including, but not limited to, what party will be responsible for paying the representative's fees and whether such fees are contingent upon the outcome of the roll-up transaction;

(v) Describe any material relationship between the representative or its affiliates and:

(A) The general partner, sponsor, any affiliate of the general partner or sponsor; or

(B) Any other person having a material interest in the roll-up transaction, which existed during the past two years or is mutually understood to be contemplated and any compensation received or to be received as a result of such relationship;

(vi) Describe in reasonable detail the actions taken by the representative on behalf of investors; and

(vii) Describe the fiduciary duties or other legal obligations of the representative to investors in each of the partnerships.

**§ 229.910 (Item 910) Fairness of the transaction.**

(a) State whether the general partner reasonably believes that the roll-up transaction is fair or unfair to investors and the reasons for such belief. Such discussion must address the fairness of the roll-up transaction to investors in each of the partnerships and as a whole. If the roll-up transaction may be completed with a combination of partnerships consisting of less than all partnerships, or with portions of partnerships, the belief stated must address each possible combination.

(b) Discuss in reasonable detail the material factors upon which the belief stated in paragraph (a) of this Item (§ 229.910) is based and, to the extent practicable, the weight assigned to each such factor. Such discussion should include an analysis of the extent, if any, to which such belief is based on the factors set forth in Instructions (2) and (3) to this Item (§ 229.910), paragraph (b)(1) of Item 909 of this subpart (§ 229.909(b)(1)) and Item 911 of this subpart (§ 229.911). This discussion also must:

(1) Compare the value of the consideration to be received in the roll-up transaction to the value of the consideration that would be received pursuant to each of the alternatives discussed in response to Item 908(b) of this subpart (§ 229.908(b)); and

(2) Describe any material differences among the partnerships (e.g., different

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types of assets or different investment objectives) relating to the fairness of the transaction.

(c) If any offer of the type described in Instruction (2)(viii) to this Item (§ 229.910) has been received, describe such offer and state the reason(s) for its rejection.

(d) Describe any factors known to the general partner that may affect materially the value of the consideration to be received by investors in the roll-up transaction, the values assigned to the partnerships for purposes of the comparisons to alternatives required by paragraph (b) of this Item (§ 229.910) and the fairness of the transaction to investors.

(e) State whether the general partner's statements in response to paragraphs (a) and (b) of this Item (§ 229.910) are based, in whole or in part, on any report, opinion or appraisal described in response to Item 911 of this subpart (§ 229.911). If so, describe any material uncertainties known to the general partner that relate to the conclusions in any such report, opinion or appraisal including, but not limited to, developments or trends that have affected or are reasonably likely to affect materially such conclusions.

*Instructions to Item 910:* (1) A statement that the general partner has no reasonable belief as to the fairness of the roll-up transaction to investors will not be considered sufficient disclosure in response to paragraph (a) of this Item (§ 229.910(a)).

(2) The factors which are important in determining the fairness of a roll-up transaction to investors and the weight, if any, which should be given to them in a particular context will vary. Normally such factors will include, among others, those referred to in paragraph (b)(1) of Item 909 (§ 229.909(b)(1)) and whether the consideration offered to investors constitutes fair value in relation to:

- (i) Current market prices, if any;
- (ii) Historic market prices, if any;
- (iii) Net book value;
- (iv) Going concern value;
- (v) Liquidation value;
- (vi) Purchases of limited partnership interests by the general partner or sponsor or their affiliates since the commencement of the partnership's second full fiscal year preceding the date of filing of the disclosure document for the roll-up transaction;

(vii) Any report, opinion, or appraisal described in Item 911 of this subpart (§ 229.911); and

(viii) Offers of which the general partner or sponsor is aware made during the preceding eighteen months for a merger, consolidation, or combination of any of the partnerships; an acquisition of any of the partnerships or a material amount of their assets; a tender offer for or other acquisition of securities of any class issued by any of the partnerships; or a change in control of any of the partnerships.

(3) The discussion concerning fairness should specifically address material terms of the transaction including whether the consideration offered to investors constitutes fair value in relation to:

- (i) The form and amount of consideration to be received by investors and the sponsor in the roll-up transaction;
- (ii) The methods used to determine such consideration; and
- (iii) The compensation to be paid to the sponsor in the future.

(4) Conclusory statements, such as "The roll-up transaction is fair to investors in relation to net book value, going concern value, liquidation value and future prospects of the partnership," will not be considered sufficient disclosure in response to paragraph (b) of this Item (§ 229.910(b)).

(5) Consideration should be given to presenting the comparative numerical data as to the value of the consideration being received by investors, liquidation value and other values in a tabular format. Financial and other information concerning the partnerships should be prepared based upon the most recent available information, such as, in the case of financial information, the periods covered by interim selected financial information included in the prospectus in accordance with Item 914 of this subpart (§ 229.914).

### § 229.911 (Item 911) Reports, opinions and appraisals.

(a)(1) *All material reports, opinions or appraisals.* State whether or not the general partner or sponsor has received any report, opinion (other than an opinion of counsel) or appraisal from an outside party which is materially related to the roll-up transaction including, but not limited to, any such report, opinion or appraisal relating to the consideration or the fairness of the consideration to be offered to investors in connection with the roll-up transaction or the fairness of such transaction to the general partner or investors.

(2) With respect to any report, opinion or appraisal described in paragraph (a)(1) of this Item (§ 229.911);

- (i) Identify such outside party;